

**AUTHORITY FOR ADVANCE RULING, TAMILNADU
ROOM NO.206, 2ND FLOOR, PAPJM BUILDING, NO.1, GREAMS ROAD,
CHENNAI - 600 006.**

**RULING UNDER SECTION 98(4) OF THE CGST ACT, 2017 AND UNDER
SECTION 98(4) OF THE TNGST ACT, 2017.**

Members present:

Smt. D. Jayapriya, I.R.S., Additional Commissioner/ Member (CGST), Office of the Principal Chief Commissioner of GST & Central Excise, Chennai -600 034.	Smt. A Valli, M.Sc., Joint Commissioner/Member (SGST), Office of the Commissioner of Commercial Taxes, Chennai-600 006.
---	--

ORDER No. 05/ARA/2024 Dated: 28.03.2024

1. *Any appeal against this Advance Ruling order shall lie before the Tamilnadu State Appellate Authority for Advance Ruling, Chennai under Sub-Section (1) of Section 100 of CGST Act 2017/ TNGST Act 2017, within 30 days from the date on the ruling sought to be appealed, is communicated.*
2. *In terms of Section 103(1) of the Act, Advance Ruling pronounced by the Authority under Chapter XVII of the Act shall be binding only-*
 - (a) *on the applicant who had sought it in respect of any matter referred to in sub-section (2) of Section 97 for advance ruling.*
 - (b) *on the concerned officer or the jurisdictional officer in respect of the applicant.*
3. *In terms of Section 103(2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.*
4. *Advance Ruling obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts, shall render such ruling to be void ab initio in accordance with Section 104 of the Act.*
5. *The provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Services Tax Act (herein referred to as an Act) are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Services Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Services Tax Act.*

GSTIN Number, if any / User id		33AAACD0559N1ZN
Legal Name of Applicant		M/s. DCW Limited
Trade Name of Applicant(Optional)		M/s. D.C.W. Ltd.
Registered Address / Address provided while obtaining user id		No.45, Sahupuram, Arumuganeri, Kayalpattinam North Village, Thoothukudi, Tamil Nadu – 628 229.
Details of Application		Form GST ARA – 01 Application Sl.No.54/2023/ARA, dated 27.10.2022
Concerned Officer		Centre: Madurai Commissionerate. Division: Tuticorin State: Tiruchendur Assessment Circle Division: Tirunelveli
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for		
A	Category	Service provision and Service Recipient
B	Description (in brief)	The sunset clause of exemption of GST on Ocean freight and Air Export freight under notification 08/2017 (integrated tax) serial number 9 item (ii) Transport of goods in a vessel @ 5% and item (vii) Goods transport services other than (i) to (vi) i.e., Air at 18%, has not been extended beyond 01.10.2022 and thus the ocean freight and air freight on exports have become taxable. In case of CIF basis of export, the freight is paid by the exporter and the freight forwarder/ shipping line charges the GST on freight on forward basis.
Issue/s on which advance ruling Required		(i)Applicability of a notification issued under the provisions of the Act. (ii)Determination of the liability to pay tax on any goods or services or both. (iii)Whether any particular thing done by the applicant with respect to any goods and/or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

Question(s) on which advance ruling is required	<p>1. Whether the exporter (M/s. DCW Ltd) is liable to pay GST on the export freight as CGST & SGST or as IGST.</p> <p>2. Whether the shipping line who accepts the goods from the exporter (M/s. DCW Ltd) is liable to pay GST as CGST & SGST or IGST.</p>
---	---

M/s. DCW Limited, No.45, Sahupuram, Arumuganeri, Kayalpattinam North Village, Thoothukudi, Tamil Nadu – 628 229 (hereinafter called as ‘the Applicant’) is engaged in the manufacture of chemical products like ‘Caustic Soda’, PVC resin etc. They are registered under GST with GSTIN: 33AAACD0559N1ZN. They have filed an application seeking Advance Ruling on the following:

1. *Whether the exporter (M/s. DCW Ltd) is liable to pay GST on the export freight as CGST & SGST, or as IGST.*
2. *Whether the shipping line who accepts the goods from the exporter (M/s. DCW Ltd) is liable to pay GST as CGST & SGST, or IGST.*

2 The Applicant submitted a copy of the challan evidencing payment of application fees of Rs.5,000/- each under sub-rule (1) of Rule 104 of CGST Rules 2017 and SGST Rules 2017.

3 The authorities of the Centre and State were addressed to report if there are any pending proceedings against the applicant on the issues raised by the applicant in the Advance Ruling application and for comments on the issues raised.

4 The sunset clause of exemption of GST on Ocean freight and Air Export freight under Notification No.08/2017 (Integrated tax) serial number 9 item (ii) Transport of goods in a vessel @ 5% and item (vii) Goods transport services other than (i) to (vi) i.e., Air at 18%, has not been extended beyond 01.10.2022 and thus the ocean freight and air freight on exports have become taxable. In the case of CIF basis of export, the freight is paid by the exporter and freight forwarder/ shipping line charges the GST on freight on forward basis.

5 On interpretation of law, it was seen that the applicant has not submitted their interpretation of law and/or facts, in the application filed, but furnished the same as below vide their letter dated 28.12.2023 and requested that the same may be taken into account, i.e.,

“In the case of CIF (Cost Insurance Freight) basis exports, the freight amount is paid by the exporter (DCW) to the freight forwarder/shipping line who have office in Thoothukudi. Whether the GST collected by the shipping line/freight forwarder from DCW is to be collected as CGST/SGST, or as IGST.”

6 The concerned officer of ‘Centre’, viz., the Additional Commissioner, Madurai Commissionerate, vide letter dated 15.03.2024 stated that no proceedings are

pending in respect of the applicant in respect of the issue raised by them in their application for Advance Ruling.

7 The State jurisdictional Officer viz. the State Tax Officer, Tiruchendur Assessment Circle stated that there is no case pending for adjudication in the applicant's case relating to the question raised in the application for advance ruling section 98 (1). The Joint Commissioner(ST), Intelligence, Tirunelveli has also remarked that no pending proceedings in the applicant's case in his jurisdiction.

8.1 The Applicant, was given an opportunity to be heard in virtual mode on 29.11.2023. Shri M. Thyagamoorthy, General Manager (Legal & Indirect Taxation), who is the Authorized Representative of the Applicant appeared for the hearing in virtual mode and he reiterated the submissions made in their application. He explained that M/s. DCW Ltd. are engaged in the manufacture of around 13 different chemical products like 'Caustic Soda', PVC resin etc., and that they export around Rs. 250 crores of their goods, annually. He explained in brief about the nature of queries raised and stated further that the queries raised in the instant case pertain basically to exports made by them on CIF basis.

8.2 To a specific query raised by the members as to whether the shipping line that they engage in general for export of their goods, are foreign based, or, are operating from India, he explained that a shipping liner having an office at Thoothukudi is being engaged normally for such export of goods. Since the Statement containing the applicant's interpretation of law and / or facts as in Sl. No. 16 of the Application filed for advance ruling, did not contain the relevant discussion / interpretation of the applicant, the members insisted that the same be furnished, so as to enable them to process the application, based on the facts of the case. The authorised representative undertook to furnish the same in 3-4 days' time.

8.3 As undertaken by them, under a letter dated 28.12.2023, they furnished the statement of interpretation and requested that the same be taken into account. Accordingly, they were accorded another opportunity of hearing on 12.01.2024, Shri M. Thyagamoorthy, General Manager (Legal & Indirect Taxation), attended the hearing in virtual mode. The AR stated that as undertaken in the personal hearing held on 29.11.2023, they have added certain additional submissions by way of their letter dated 28.12.2023, to the 'Statement of interpretation' already furnished by them and requested to take the same on record.

DISCUSSION AND FINDINGS:

9.1 We have carefully considered the submissions made by the Applicant in their application, submissions made during the personal hearing and the comments furnished by the Centre and State Tax jurisdictional officers. We find that the applicant has filed an application seeking Advance Ruling on the following:

1. *Whether the exporter (M/s. DCW Ltd) is liable to pay GST on the export freight as CGST & SGST, or as IGST.*
2. *Whether the shipping line who accepts the goods from the exporter (M/s. DCW Ltd) is liable to pay GST as CGST & SGST, or IGST.*

9.2 Prima facie, it is observed that both the queries relate to (i) Applicability of a notification issued under the provisions of the Act; (ii) Determination of the liability to pay tax on any goods or services or both; and, (iii) Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term. Thereby, the queries under consideration get covered under Section 97(2)(b), 97(2)(e) and 97(2)(g) of the CGST Act, 2017, and accordingly, the application is liable for admission.

9.3 As the term 'place of supply' plays a significant role in the taxability and the nature of tax to be charged, provisions relating to the same as in 'Chapter V' covering Sections 10 to 14 of the IGST Act, 2017, needs to be discussed in this case before proceeding further. The situations covered under the relevant sections are as below:-

Section 10 – *Place of supply of goods other than supply of goods imported into, or exported from India.*

Section 11 - *Place of supply of goods imported into, or exported from India.*

Section 12 - *Place of supply of services where location of supplier and recipient is in India*

Section 13 - *Place of supply of services where location of supplier or location of recipient is outside India*

Section 14 – *Special provision for payment of tax by a supplier of online information and database access or retrieval services.*

As could be seen from the above, Sections 10 and 11 discusses about the place of supply of 'goods', and Section 14 discussed about 'Online information and database access or retrieval service'. As the issue in the instant case revolves predominantly around the service involving 'export freight', Section 12 and 13 which discusses about the place of supply of 'services', are found to be applicable in this case.

9.4 At the outset, as one may be aware Sl.No.20 of the Exemption Notification No.9/2017-Integrated Tax (Rate) dated 28.06.2017 provided for exemption on services relating to "Services by way of transportation of goods by an aircraft from a place outside India upto the customs station of clearance in India." Vide Notification No.2/2018-Integrated Tax (Rate) dated 25.01.2018, Sl.Nos.20A and 20B were inserted after Sl.No.20, to provide for exemption on services by way of transportation of goods by an aircraft, and by a vessel, respectively, when the said services are provided from customs station of clearance in India to a place outside

India. However the conditions attached to Sl.Nos.20A and 20B, read as “*Nothing contained in this serial number shall apply after the 30th day of September 2018*”. The said condition was extended time and again, and as a ‘sunset’ clause, it was extended upto 30.09.2022 vide Notification No.07/2021-Integrated Tax (Rate) dated 30.09.2021, beyond which no such extension was provided under any other notification.

9.5 This meant that the provision of such services of ‘transportation of goods from customs station of clearance in India to a place outside India’ when provided by means of an aircraft or a vessel have become taxable with effect from 01.10.2022. Apart from this, it is also pertinent to note that in cases of outbound shipments whether by air or by sea, where both the parties (supplier and recipient) are in India, the place of supply was to be determined in terms of the proviso to Section 12(8) of the IGST Act, 2017 which was inserted with effect from 1.02.2019, and which read as :-

“Provided that where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods.”

Therefore, since the supplier (shipping line / freight forwarder) of service (transportation of goods by vessel/air), is in India, and the recipient (the applicant) is also in India, the place of supply is to be determined in terms of Section 12 of the IGST Act, 2017, in such cases. Accordingly, from 1.10.2022 onwards taxes under IGST is liable to be discharged in the instant case, in terms of Section 7(5) of the IGST Act, 2017, read with proviso to Section 12(8) of the Act, *ibid*, which fixes the place of supply, as the ‘place of destination of such goods’, which is outside India.

9.6 Apart from the proviso to Section 12(8) of the IGST Act, 2017, it is also seen that Section 13 of the IGST Act, which provides for ‘place of supply of services in a situation where the location of supplier, or location of recipient, is outside India’, states in sub-section 9 to Section 13, as follows :-

“(9) The place of supply of services of transportation of goods, other than by way of mail of courier, shall be the place of destination of such goods.”

9.7 However, it is to be noted that from 1.10.2023 onwards, the omission of both the aforesaid provisions, i.e., proviso to Section 12(8) of the IGST Act, 2017, and Section 13(9) of the Act, *ibid*, proposed under Sections 161 and 162 respectively of the Finance Act, 2023 (No.8 of 2023), takes effect, by way of Notification No.28/2023-Central Tax dated 31.07.2023. That is to say that from 1.10.2023 onwards, with the omission of Section 13(9), the ‘place of supply’ under Section 13 (where location of supplier or location of recipient is outside India) gets fixed by default as the ‘location of the recipient of service’, vide Section 13(2) of IGST Act, which states as :-

“(2) The place of supply of services except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services.”.

Likewise, Section 12(8) of the IGST Act, 2017, now (from 1.10.2023) operates without the proviso, which reads as :-

“(8) The place of supply of services by way of transportation of goods, including by mail or courier to,—

(a) a registered person, shall be the location of such person;

(b) a person other than a registered person, shall be the location at which such goods are handed over for their transportation.”

Here again, the place of supply of such services under Section 12 (where location of supplier and recipient is in India) when provided to a ‘registered person’, shall be the location of such person, which in turn happens to be the ‘recipient of service’.

9.8 In order to align with the change in ‘place of supply’, after the amendments carried out in respect of the aforesaid legal provisions as discussed above, the CBIC has caused the issue of the certain Notifications, in order to amend/omit the clauses that existed so far with effect from 01.10.2023, in the respective parent notifications, as mentioned below :-

S.No	Amendment Notification No./Date	Parent Notification No./Date	Changes effected
1	11/2023-IT (R) dt.26.09.2023	8/2017-IT (R) dt.28.06.2017 (Rate Notification)	A portion of the words omitted in item (ii) of column (3) against serial number 9 of the table.
2	12/2023-IT (R) dt.26.09.2023	9/2017-IT (R) dt.28.06.2017 (Exemption Notfn)	A new ‘proviso’ substituted against the existing proviso in column (3) against serial number 10 of the table.
3	13/2023-IT (R) dt.26.09.2023	10/2017-IT (R) dt.28.06.2017 (RCM Notification)	Serial number 10 and the entries relating thereto of the table, omitted.

9.9 It becomes imperative here to reproduce the submissions of the applicant in the instant case in relation to the ‘Interpretation of law and facts’ furnished vide their letter dated 28.12.2023, i.e.,

“In the case of CIF (Cost Insurance Freight) basis exports, the freight amount is paid by the exporter (DCW) to the freight forwarder/shipping line who have office in Thoothukudi. Whether the GST collected by the shipping line/freight forwarder from DCW is to be collected as CGST/SGST, or as IGST.”

Various issues become clear from the above submissions, viz.,

- That the exports undertaken by the applicant (DCW) are on CIF basis.
- The ocean freight is paid by the applicant as a recipient of service to the shipping line / freight forwarder.
- That the shipping line / freight forwarder has an office in Thoothukudi, Tamilnadu.
- That the shipping line / freight forwarder is to be construed as a registered entity, as they are collecting GST from the applicant.

9.10 It is clear from the above that the instant case relates to chargeability and the nature of tax on outbound ocean freight in respect of the exports undertaken by the applicant on CIF basis, where a shipping line/freight forwarder who has an office in Thoothukudi carries out the activities relating to transportation of goods by vessel. It may be noted that once the sunset clause on ocean/air freight provided under Notification No.07/2021-Integrated Tax (Rate) dated 30.09.2021 was not extended beyond 30.09.2022, such activities under specific circumstances became liable to tax under GST from 1.10.2022 onwards. However, the nature of tax to be charged hinged on the 'place of supply' as 'the place of destination of such goods' that existed under the then extant provisions, viz., 'proviso to Section 12(8)' and Section 13 (9) of the IGST Act, 2017. Accordingly, taxes under IGST was liable to be charged for such transactions, as the place of supply was 'outside India', which is to be treated as 'services in the course of inter-state trade or commerce' as laid down in Section 7(5) of the IGST Act, 2017.

9.11 Post the amendments with effect from 1.10.2023, as discussed in detail in paras 9.5 and 9.6 above, the 'place of supply' in respect of such services now gets fixed at the location of the 'recipient of service'. In the instant case of the applicant, it is observed from the details furnished by the applicant that both the service provider and recipient (applicant) are in Thoothukudi, Tamilnadu. Further, as per the existing legal provisions with effect from 1.10.2023, the 'place of supply' of such services is the place of the recipient, which again is Thoothukudi, Tamilnadu. Accordingly, as on date, the instant transaction becomes a case of intra-state supply, whereby taxes under CGST/SGST becomes liable to be discharged by the service provider, i.e., the shipping line/freight forwarder who is reported to be having an office in Thoothukudi, Tamilnadu. It is to be reiterated here that the GST liability existed prior to 1.10.2023 as well, and that only the nature of supply and thereby the nature of tax to be charged has undergone a change. It is also to be reiterated that once the liability to tax under GST in the instant case vests with the shipping line/freight forwarder, no further liability lies with the applicant in respect of the same service, as the same is in the nature of input services received by them, and as they reportedly undertake export of goods on 'CIF' basis.

9.12 It is seen that the definition of 'advance ruling', as provided under Section 95(a) of the CGST Act, 2017, reads as below :-

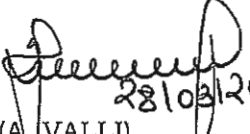
"(a) 'advance ruling' means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant."

Therefore, we are of the opinion that the second query relating to the freight forwarder/shipping line, who is not the applicant in the instant case, need not be answered by the Authority for Advance Ruling.

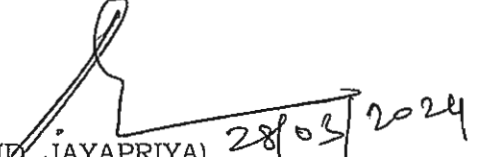
10 Based on the above discussions, we rule as under:

RULING

1. The exporter (M/s. DCW Ltd.) is not liable to pay GST on export freight.
2. Not answered, as the shipping line is not the applicant in the instant case.


28/03/2024
(A. VALLI)
Member (SGST)




28/03/2024
(D. JAYAPRIYA)
Member (CGST)

To

M/s. DCW Limited,
No.45, Sahupuram, Arumuganeri,
Kayalpattinam North Village,
Thoothukudi, Tamil Nadu - 628 229.

//by RPAD//

Copy submitted to:

1. The Principal Chief Commissioner of GST & Central Excise,
26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-600034.
2. The Commissioner of Commercial Taxes,
2nd Floor, Ezhilagam, Chepauk, Chennai - 600 005.

Copy to:

1. The Commissioner of GST and Central Excise,
Madurai Commissionerate, Central Avenue Building,
4, Lal Bahdur Shastri Road, Bibikulam, Madurai - 625 002.
2. The State Tax Officer,
Tiruchendur Assessment Circle,
Travellers Bungalow Road,
Tiruchendur - 628 215.
3. Master File/ Spare - 2.